

OFFICE OF THE WASHINGTON STATE LIQUOR CONTROL BOARD

March 13, 1986

The regular meeting of the Washington State Liquor Control Board was called to order at 9:30 a.m., Thursday, March 13, 1986, in the Board conference room, fifth floor, Capital Plaza Building, Olympia, by Chairman L. H. Pedersen. Board Members Kazuo Watanabe and Robert D. Hammah were present. Board Secretary Judy Pierce recorded the meeting.

PUBLIC HEARING - PROPOSED RULE CHANGE. Chairman L. H. Pedersen announced that at this time a public hearing would be held concerning the adoption of WAC 314-37-020 "Manufacturer's On Site Vending Appointment—Qualifications." He noted that the appropriate notices had been filed with the Code Reviser's office and mailed to various news media and interested persons.

John Hennen, Senior Assistant Attorney General, explained that this new rule will allow domestic wineries, which also manufacture liquor products other than wine pursuant to a license under Title 66 RCW, to sell those products on the winery premises, under a vendor appointment from the Board. He said the new section spells out the qualifications. It provides for a contractual agreement, which is required to contain certain provisions, between the Board and the winery. All sales made under the manufacturer's on site vending appointment are subject to all applicable state taxes, and shall be made at such prices as are established by the Board for sales of the same liquor product through state liquor stores and agencies.

Mr. Hennen noted that currently domestic wineries sell wine of their own production on the winery premises at retail. Recently at least one domestic winery has begun producing a liqueur under a manufacturer's license in addition to producing wine under its winery license. Because the liqueur is not wine by definition, a special appointment from the Board is required to permit sale of this item at retail to visitors to the winery. Such sales will be mainly for promotional purposes and will assist the industry in developing the market for the liqueur.

J. B. H. H.
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DEP EXHIBIT
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NOTARY PUBLIC

6-2705
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PLAINTIFF'S
EXHIBIT

CASE
NO. CV04-0360P

EXHIBIT
NO. 072

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John Hennen indicated that the Bureau of Alcohol, Tobacco and Firearms has suggested that in section (1) and subsection (3)(a) the wording be changed to "licensed" premises rather than "winery" premises because of a federal regulation which prohibits spirituous liquor to be sold on a winery premises. Mr. Hennen recommended that this wording change be adopted. Board Member Hannah moved to adopt the wording "licensed premises" in the sections noted above. Board Member Watanabe seconded the motion and it carried unanimously.

Bill Stuht, representing Sta. Michelle Winery, spoke in support of the proposed new section.

Michael Putnam, representing the North Whidbey Chamber of Commerce, spoke in support of the rule change. He gave a brief overview of the promotional activities that he is involved with in the community and indicated that the opportunity this rule change provides will enhance the tourist industry.

Further discussion followed. Board Member Hannah moved to adopt WAC 314-37-020. Board Member Watanabe seconded the motion and it carried unanimously.

PUBLIC HEARING - PROPOSED RULE CHANGE. Chairman Pedersen announced that at this time a public hearing would be held concerning the amendment of WAC 314-24-080 "Containers--Sizes and Types Permitted," and an amendment of WAC 314-28-010 "Records." He noted that the appropriate notices had been filed with the Code Reviser's Office and mailed to various news media and interested persons.

John Hennen explained that the purpose of the amendment to WAC 314-24-080 is to eliminate references to container sizes which are no longer appropriate. He said the purpose of the amendment to WAC 314-28-010 is to bring the WAC into conformity with RCW 66.24.140 which was amended by the legislature in 1981.

Jan Britt, Supervisor, M.I.W. Division, stated that with reference to WAC 314-24-080, wine sizes have been approved for sale in this state other than those listed in the WAC (e.g., 355 milliliter size). Furthermore, requests submitted by United States or Washington State wineries for container sizes not included in the current WAC must

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technically be denied. The proposed amendment permits wine from other countries to be imported in any container size approved by the Bureau of Alcohol, Tobacco and Firearms.

In addition, the sizes listed in the current rule are stated in quarts when, in fact, containers are all now in metric measurement sizes.

Jim Halstrom stated that the Washington Wine Industry supports the proposed amendment.

Following discussion, Board Member Hannah moved to adopt the amendments to WAC 314-24-060 and WAC 314-26-010. Board Member Watanabe seconded the motion and it carried unanimously.

PUBLIC HEARING - PROPOSED RULE CHANGE. Chairman Pedersen announced that at this time a public hearing would be held concerning amendments to WAC 314-20-100 "Beer Wholesale Price Posting," WAC 314-20-105 "Beer Supplier's Price Filings, Contracts and Memoranda," WAC 314-24-190 "Wine Wholesale Price Posting," WAC 314-24-200 "Wine Suppliers' Price Filings, Contracts and Memoranda," and WAC 314-52-114 "Advertising by Retail Licensees, Offering for Sale, or Selling Beer, Wine or Spirituous Liquor at Less Than Cost--Prohibited--Exceptions." He noted that the appropriate notices had been filed with the Code Reviser's office and mailed to various news media and interested persons.

John Herman, explained that the proposed amendment to WAC 314-20-100 is to delete from the rule the references to 19.90 RCW, which was repealed by the legislature in 1983. New language is proposed which would define cost as "acquisition cost."

The purpose of the amendment to WAC 314-20-105 is to delete from the rule the reference to 19.90 RCW. New language is proposed which would define cost as "acquisition cost."

The purpose of the amendment to WAC 314-24-190 is to delete from the rule the references to 19.90 RCW. New language is proposed which would define cost as "acquisition cost." This amendment will also properly reflect the total amount of the wine tax including the surcharge in RCW 82.02.030.

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The purpose of the amendment to WAC 314-24-200 is to delete from the rule the references to 19.90 RCW. New language is proposed which would define cost as "acquisition cost." This amendment will also properly reflect the total amount of the wine tax including the surcharge in RCW 82.02.030.

The purpose of the amendment to WAC 314-52-114 is to delete from the rule the requirement that "cost of doing business" be included within the definition of "cost" for purposes of determining whether a sale at less than cost has occurred. New language is proposed which would define cost as "acquisition cost."

Mr. Hansen added that these rules in their present form are administratively unworkable in that a determination of "cost of doing business" requires the use of debatable accounting concepts and creates numerous problems in determining applicable timeframes, application to multi-outlet and/or multi-division operations, etc. Removing the "cost of doing business" concept from the definition of "cost" would make administration and enforcement of these rules simple and efficient in that the cost of the goods involved could easily be determined and compared to the price at which they were sold to the consumer.

Mr. Hansen said that prohibiting sales below acquisition cost would prevent the vast majority of disruptive and predatory practices which these rules were designed to prevent. It would also allow for a more efficient and widespread distribution of the Board's enforcement resources so that better overall control would be achieved.

Mr. Hansen indicated that this proposed rule change had been heard at a public hearing on November 28, 1984, at which time the issue was tabled and a committee of industry representatives was formed for the purpose of developing a simplified standard that would be equitable to everyone. Mr. Hansen said to date that committee has not provided the Board with such a "simplified standard."

Chairman Pedersen asked if anyone present wished to speak either in favor of or in opposition to the proposed amendment.

Al Benaroya, representing Consolidated Beverages, spoke in opposition to the proposed change regarding "cost of doing business." His main concern was with regard to direct labor costs and he suggested that "acquisition cost" should include direct labor charges.

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Frank Sitko, representing the Washington Food Dealers Association, also spoke in opposition to the proposed rule change. He said he represented large as well as small grocers. There is much concern that if businesses were allowed to sell products at acquisition cost only, without some standard markup, it would result in larger businesses ultimately forcing the smaller competitors out of business.

Mr. Sitko indicated that a letter had been sent to the Board in February 1985, informing the agency that the industry task force had agreed on the following language: "In determining 'cost' for purposes of this section, the 'cost of doing business' or 'overhead expense' element will be presumed to be 10% of the invoice or replacement cost of the liquor involved. . . ." Mr. Sitko also indicated in his February 20, 1985 letter, that statistics regarding the percentages of the "cost of doing business" would be forthcoming; however, due to an apparent breakdown in communications, this information had not been compiled.

Board Member Hannah reported he had received a telephone call from Frances Pistoressi of Pistoressi Distributing Company, Oak. She asked Mr. Hannah to relay her request that delivered costs be included as a part of the acquisition cost.

Mr. Hannah stated that after hearing the testimony this morning, he would support a fixed percentage, if the industry could agree to a specified rate.

Jim Kauffman, an independent retailer from Tacoma, also spoke in opposition to the proposed changes. He said he concurred with Mr. Sitko's comments, and said he would support a fixed percentage which was agreed to by the people in the industry. Mr. Kauffman also stated he believed that the lack of a standard markup on top of the acquisition cost would result in increased consumption of liquor because the lower liquor prices could encourage price wars and stimulate sales.

Bob Secher, representing the Washington Restaurant Association, said his membership was sympathetic to the concerns raised by Mr. Sitko and Mr. Kauffman, and he indicated he thought that cost of doing business plus a percentage markup would be reasonable.

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John Hannan addressed some of the concerns raised by those who testified, including Antitrust laws. His major concern was that the "sales below cost" provisions are currently unenforceable and will not be enforceable until the Board takes action to amend these rules with some standard of definition for "cost." He noted that this means there is presently no sales below cost prohibition and thus there is none legally possible until the Board takes action. He suggested that a specific deadline for submission of specific language be established if the matter were to be tabled for a second time.

Board Member Watanabe said he could support a fixed percentage on top of acquisition cost, if the industry would agree to a standard figure and present specific language for Board consideration within a reasonable period of time.

Further discussion followed. Mr. Sitko agreed to go back to the industry and try to formulate proposed language to include a percentage markup, to be provided to the Board no later than July 1, 1986.

Board Member Watanabe moved to continue the hearing until July 1, 1986. Board Member Hannah seconded the motion and it carried unanimously. Chairman Pedersen indicated that Board staff would be available to assist those working on the development of specific alternative language for the definition of "cost." The public hearing ended at 10:40 a.m.

MEETING RECESSED. The meeting was recessed at 10:40 a.m., until the call of the Chair.

EXECUTIVE SESSION. The meeting was reconvened at 10:45 a.m. by Chairman Pedersen. Board Members Kazuo Watanabe and Robert D. Hannah were present. The Board immediately entered into executive session to discuss personnel matters. The Board returned to regular session at 11:35 a.m.

PURCHASING DIVISION - LISTING PRESENTATION. Present to confer with the Board were Bob Harvey, Liquor Purchasing Agent, and Jim Trehearne, representing the 375 Spirits Company. Mr. Trehearne presented five items for new listing consideration. General discussion followed; no action was taken.

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MEETING RECESSED. The meeting was recessed at 11:59 a.m., until the call of the Chair.

MEETING RECONVENED. The meeting was reconvened at 2:00 p.m. by Chairman L. H. Pedersen. Board Members Kazuo Watanabe and Robert D. Hannah were present.

LICENSE DIVISION - SUPERVISOR POSITION. Chairman Pedersen indicated that the Board had carefully reviewed the applications received for the position of Supervisor - License Division, and had conducted a number of personal interviews. Board Member Hannah moved to approve the appointment of Chuck Dalrymple to the position. Chairman Pedersen seconded the motion and it carried unanimously.

PURCHASING DIVISION - LISTING PRESENTATIONS. Present to confer with the Board were Bob Harvey, Liquor Purchasing Agent, and Benji Harris and Jack Quinn, representing Maidstone Wine and Spirits, Inc. The representatives of Maidstone presented one item for new listing consideration. General discussion followed; no action was taken.

Lorne Jacobson, representing Snoqualmie Winery, presented four items for new listing consideration. General discussion followed; no action was taken.

PURCHASING DIVISION - PROPOSED LETTER. Staff present to confer with the Board were Bob Harvey and John Hennen. Discussion followed regarding a proposed letter to Drambuie Liqueurs Company, Ltd. No action was taken.

ADMINISTRATIVE DIVISION - INITIATIVE NO. 487. Staff present to confer with the Board were Bob Harvey, Carter Mitchell and John Hennen. Mr. Mitchell briefed the Board on Initiative 487. General discussion followed; no action was taken.

PURCHASING DIVISION - LISTING PRESENTATION. Present to confer with the Board were Bob Harvey, and Jerome Brown, representing Washington Liquors Ltd. Mr. Brown presented two items for new listing consideration. General discussion followed; no action was taken.

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MEETING RECESSED. The meeting was recessed at 3:45 p.m., until the call of the Chair.


MEETING ADJOURNED. The meeting was adjourned at 4:30 p.m.


L. H. Pedersen, Chairman


Kazuo Watanabe, Member


Robert D. Hannah, Member

Attest:


Judy Pierce
Board Secretary

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